

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER DISASTER SITE
LITIGATION :

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IN RE LOWER MANHATTAN DISASTER SITE
LITIGATION :

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IN RE COMBINED WORLD TRADE CENTER
DISASTER SITE AND LOWER MANHATTAN
DISASTER SITE LITIGATION :
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ALVIN K. HELLERSTEIN, U.S.D.J.:

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/18/11
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**ORDER SUMMARIZING
STATUS CONFERENCE AND
SETTING NEXT
CONFERENCE**

21 MC 100 (AKH)

On Friday, April 15, 2011, I held a status conference in the above-captioned Master Calendar, to set forth a schedule of pretrial practices for those Plaintiffs, now 78 in number, who were eligible to settle under the Settlement Process Agreement, As Amended ("SPA"), but chose to continue litigation; and to monitor other aspects of the settlement and litigation process. The following topics were discussed and rulings made.

1. Plaintiffs and Defendants shall complete the questionnaire created by the Special Masters and the Court. This database proved invaluable for managing the cases in this and related Master Calendars before the SPA, and will be equally valuable in managing the cases that remain. The following schedule sets forth deadlines.
 - a. By May 6, 2011, the Court, aided by the Special Masters, shall review the questionnaire and pare away any questions that are no longer useful. Plaintiffs' and Defendants' Liaison Counsel shall have the opportunity to consult with the Special Masters, to advise the Special Masters of which questions counsel believe remain useful.

- b. By June 1, 2011, all Plaintiffs' Counsel and Defendants' Liaison Counsel shall deliver to each other all medical reports within their respective control for each Plaintiff covered by this order. By April 29, 2011, every Plaintiff identified on the attached Schedule A (those whose releases have not been delivered in the form required by medical providers) shall have signed and delivered the releases to the City. Any Plaintiff who fails to comply with this Order will be subject to an appropriate sanction, which could involve removal from the list of opt-out cases eligible to be advanced to trial, or dismissal.
- c. By June 10, 2011, Plaintiffs shall have filled out and submitted the questionnaires.
- d. By June 17, 2011, Defendants shall have filled out and submitted the questionnaires.
- e. By July 8, 2011, Plaintiffs' counsel shall select and submit to the Court 5 cases to be considered for further pre-trial proceedings and trial.
- f. By July 13, 2011, Defendants' counsel shall select and submit to the Court 5 cases to be considered for further pre-trial proceedings and trial.
- g. By July 18, 2011, the Court shall select 3-5 cases to be considered for further pre-trial proceedings and trial, either from those chosen by counsel or by its own selection, and shall identify the precise cases to be advanced towards trial.
- h. A status conference shall be held July 25, 2011, at 2:30pm, to fashion an appropriate discovery plan, and to regulate such other matters as may be

desirable. Until this conference, no discovery is to be done except as provided in this Order.

2. Noah H. Kushlefsky, Esq., reported on his progress with regard to the 57 Plaintiffs who opted to accept compensation from the first Victim Compensation Fund. Mr. Kushlefsky has personally spoken with 52 of these Plaintiffs and represented that he will speak with the remainder of them within a week. Of the 52 with whom he has spoken, Mr. Kushlefsky reported that 7 intend to dismiss their cases voluntarily, but that the remaining 45 intend to continue litigating. With regard to these 45, Mr. Kushlefsky reported that he is exploring if there may be legal bases to allow them to continue notwithstanding the release provisions of the Air Transportation Safety and System Stabilization Act ("ATSSSA"), 49 U.S.C. § 40101 et seq. Mr. Kushlefsky is to announce a plan for these Plaintiffs by letter filed by July 11, 2011. The letter shall identify the Plaintiffs who propose to continue prosecuting their cases and the motions he intends to bring on their behalf to avoid the release provisions of ATSSSA.
3. Defendants' Liaison Counsel represented that at this time, they have no imminent plans to make motions to dismiss any remaining Plaintiffs. Defendants intend to complete the limited discovery program authorized by this Order and evaluate possible motion practice thereafter.
4. Counsel for the WTC Captive Insurance Company reported on the continued progress of payments made under the terms of the SPA. As of this conference, the Allocation Neutral had authorized, and the WTC Captive had made, \$36.9 million in payments. This money reflects payments to 9,675 Primary Plaintiffs,

representing 95.6 percent of the Primary Plaintiff settling population, and to Derivative Plaintiffs. Some Plaintiffs have not yet been able to receive payments because issues remain with regard to their paperwork. Additionally, the WTC Captive reported that in the next 2 weeks, MetLife will begin sending insurance policy certificates for the cancer coverage provided under the SPA. The first wave of certificates will be sent to approximately 8,000 Plaintiffs, with additional waves of certificates to be mailed thereafter.

5. The next conference shall be held on July 25, 2011, at 2:30pm. The conference shall be held in Courtroom 14D. The previously scheduled conference in the 21 MC 102 Master Calendar is adjourned to August 2, 2011, at 2:30pm.

SO ORDERED.

Dated:

April 13, 2011
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

EXHIBIT A

Plaintiff Name	Case No.	Counsel
Biglin, Richard	06cv13620	Worby Groner Edelman & Napoli Bern LLP
Burban, Richard	07cv09805	Douglas & London, PC
Egan, William	05cv05364	Godosky & Gentile, PC
Fagan, Michael	06cv12051	Worby Groner Edelman & Napoli Bern LLP
Flores, Luis	06cv12066	Worby Groner Edelman & Napoli Bern LLP
Fusaro, Joseph	10cv02748	Douglas & London, PC
Gadry, Stephen	06cv11186	Worby Groner Edelman & Napoli Bern LLP
Gillan, Thomas	10cv02452	Douglas & London, PC
Rozakis, William	06cv10473	Worby Groner Edelman & Napoli Bern LLP
Sanchez, Fernando	06cv12484	Worby Groner Edelman & Napoli Bern LLP
Tuitt, Brian	10cv03742	<i>pro se</i>